Decision 18-07-046 July 26, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City and County of San Francisco for Rehearing of Resolution E-4907.	Application 18-03-005 (Filed March 12, 2018)

ORDER MODIFYING RESOLUTION E-4907 AND DENYING REHEARING OF THE RESOLUTION, AS MODIFIED

I. SUMMARY

Today's decision addresses the application for rehearing of Resolution E-4907 (or "Resolution"),[1] filed by the City and County of San Francisco ("CCSF"). In Resolution E-4907, we adopted a process of review of Community Choice Aggregators' ("CCA") Implementation Plans. The review process coordinates the timeline of mandatory forecast filings of our Resource Adequacy program to ensure newly-launched and expanding CCAs comply with Resource Adequacy requirements of Public Utilities Code section 380[2] before they serve customers.

CCSF filed a timely Application for Rehearing of Resolution E-4907. In its application for rehearing, CCSF argues that Resolution E-4907: (1) was not supported by record evidence; (2) made changes to Decision (D.) 05-12-041[3] in violation of sections

[1] Unless otherwise noted, citations to Commission resolutions since 2000 are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/ResolutionSearchForm.aspx.

[2] Subsequent section references are to the Public Utilities Code, unless otherwise noted.

[3] *Order Instituting Rulemaking to Implement Portions of AB 117 Concerning Community Choice Aggregation -- Decision Resolving Phase 2 Issues on Implementation of Community Choice Aggregation Program* [D.05-12-041] (2005). D.05-12-041 was modified by *Order Instituting Rulemaking to Implement Portions of AB 117 Concerning Community Choice Aggregation -- Decision Modifying D.05-12-041 to Clarify the Permissible Extent of Utility Marketing with Regard to Community Choice Aggregation Programs* [D.10-05-050] (2010).

1708 and 1708.5 because there were no evidentiary hearings; and (3) lacked sufficient findings to justify alleged changes to D.05-12-041. Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company filed a joint response to CCSF's rehearing application.

We have carefully considered the arguments raised in CCSF's application for rehearing, and do not find grounds for granting rehearing. We modify Resolution E-4907, as set forth below, to add clarifying information and to fix ambiguous language. Rehearing of Resolution E-4907, as modified, is denied

II. DISCUSSION

A. Resolution E-4907 is supported by record evidence.

CCSF contends that our decision in Resolution E-4907 was an abuse of discretion and arbitrary and capricious because the Resolution was not supported by any evidence. (Rehg. App. at p. 2.) CCSF argues there is a lack of an adequate factual record to support the supposed problem of cost shifting underlying the need for the Resolution. (Rehg. App. at p. 4.) CCSF is incorrect.

In D.05-12-041, we directed the Executive Director to "prepare and publish instructions for CCAs and utilities that includes a timeline and describes the procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, notice to CCAs of the appropriate CRS, and registration of CCAs." (D.05-12-041 at p. 70 [Ordering Paragraph 10].)[4] We instructed that the "process and the timeline shall be consistent with the statute. . . ." (*Ibid*.)

Resolution E-4907 implements these directives by adopting a process of review of CCA Implementations Plan that is consistent with the statutory requirement that there is no shifting of costs between CCA customers and the bundled service customers of an electrical corporation. (Pub. Util. Code § 366.2(a)(4).)[5]

[4] Section 366(c)(8) establishes the Commission's authority to designate the CCA's start date.
[5] See also Pub. Util. Code §§ 366.2(d)(1), 365.2 and 366.3.

CCAs must comply with the Resource Adequacy requirements of section 380. However, if an existing or pre-operational CCA does not submit an annual load forecast during the Commission's established load forecast timeline,[6] it will not be allocated a year-ahead Resource Adequacy obligation and the incumbent utility remains responsible for the load even though those customers will soon be served by the CCA. Resource Adequacy contracts of less than one year are not captured by the Power Charge Indifference Adjustment ("PCIA"). (D.11-12-018 at pp. 101 & 108 [Finding of Fact 24 and Conclusion of Law 3].)[7] Thus, unlawful cost shifting occurs. As discussed in the Resolution, the recent rapid formation of CCAs underscored the need for the adopted CCA process and timeline ordered in D.05-12-041.

The adopted process of review implemented Ordering Paragraph 10 of D.05-12-041 and the adopted timeline coordinated with mandatory forecast filing of the Commission's Resource Adequacy program to ensure that cost shifting did not occur.[8] It is reasonable and within our authority to align the CCA's Implementation Plans with Resource Adequacy requirements to ensure compliance with statutory requirements. Such action is not only consistent with the direction of Ordering Paragraph 10 of D.05-12-041, but necessary to ensure compliance with the cost shifting prohibitions contained in sections 366.2(a)(4).

Although no further justification was necessary to develop and implement the process and timeline ordered by D.05-12-041, the Resolution demonstrated that cost shifting was occurring. The Resolution illustrated the scale of load migration happening in the 2018 Resource Adequacy process and the Peak and Local Resource Adequacy requirements that existing and new CCA's systems would have been allocated had they

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[6] This could occur for newly formed or expanding CCAs.

[7] *Rulemaking regarding whether, or subject to what Conditions, the suspension of Direct Access may be lifted consistent with Assembly Bill 1X and Decision 01-09-060 -- Decision Adopting Direct Access Reforms* [D.11-12-018] (2011).

[8] Resource Adequacy requirements also prohibit cost shifting. (Pub. Util. Code § 380.)

been part of 2018 Resource Adequacy process. (Resolution E-4907 at p. 8.) We note, however, that the Resolution does not contain citations or an explanation of how these numbers were derived. We modify Resolution E-4907, as set forth in the ordering paragraphs below, to provide this information.

CCSF contends that evidence of load migration is not sufficient to infer ongoing cost shifting. (Rehg. App. at pp. 2-3.) CCSF argues that the Resolution does not determine that there are actual stranded costs or cost shifting because it states only that there could be potentially millions in stranded costs and potentially a contravention of the indifference requirement in section 366.2 which it contends is not sufficient evidence. (Rehg. App. at p. 3.) CCST is wrong.

As described above, the Resolution describes how cost shifting occurs. The reference to "potentially" millions in stranded costs was to demonstrate the possible magnitude of the problem. It is not necessary to determine or prove the actual magnitude of the cost shifting because the law precludes any cost shifting. (Pub. Util. Code, §§ 366.2 & 380.)

Moreover, the Resolution states that the Energy Division issued data requests confirming the existence of stranded costs. Although these data responses were confidential, they confirmed the existence of the stranded costs. By using these data requests to confirm the existence of stranded costs, we appropriately relied upon the data responses and we modify Resolution E-4907 to make this clarification. We note that disclosure of the confidential responses was not necessary because the amount of stranded costs was not the issue.

CCSF contends there is not sufficient factual record to determine the magnitude of cost shifting, whether other Commission decisions address cost shifting, and whether cost-shifting can be mitigated by other means. However, we were not required to address these issues. In implementing the directives mandated by D.05-12-041, we determined that cost shifting was occurring and we addressed the issue.

Finally, CCSF contends that the lack of factual record was made clear by President Picker's comments published in California Energy Markets, which indicated

that the Resolution was needed for reliability purposes and by Commissioners Randolph's and Guzman Aceves' statements in a Commission Press Release that it was needed to address double procurement. (Rehg. App. at p. 4.) CCSF argues that neither of these issues was mentioned in the Resolution.

CCSF is essentially arguing that these statements formed the basis for the Resolution. This claim has no merit. Statements by individual Commissioners are not the action of the Commission. (See Pub. Util. Code § 310; see also *Order Modifying Decision (D.) 02-12-064 and Denying Rehearing of the Decision, as Modified* [D.03-08-072] (2003) at p. 22 [noting that "statements made by Commissioners at Commission meeting[s] are not the action of the Commission"]; and *Application of the Division of Ratepayer Advocates and The Utility Reform Network for Rehearing of Resolution E-4227A Approving in Part and Denies in Part Southern California Edison's Request to Establish a Memorandum Account and Recover up to $ 30 Million in Costs For a California IGCC Study.* [D.09-09-049] (2009) at p. 15.) The Resolution provides our rational for adopting the orders contained therein. Commissioners' comments do not affect the determination to approve the Resolution.

B. Resolution E-4907 did not modify any Commission decision.

CCSF contends we have violated sections 1708 and 1708.5 because we modified a prior decision without evidentiary hearings. (Rehg. App. at p. 5.) CCSF argues that because D.05-12-041 was adopted after an evidentiary hearing, evidentiary hearings are necessary to amend that decision. CCSF contends that the new annual filing deadlines and associated minimum one-year waiting period for CCAs to begin service to additional customers and the waiver process are substantial changes to prior Commission decisions. (Rehg. App. at p. 6.) CCSF argues that because these requirements were not contained in or contemplated by D.05-12-041, adoption of these requirements is a modification of that decision. (Rehg. App. at p. 6.) CCSF is not correct.

Resolution E-4907 does not rescind, alter, or amend D.15-12-041 but rather implements of the directives that were ordered in that decision and is consistent with the

statutory requirements in sections 366.2 and 380 that prohibit cost shifting. As stated above, Ordering Paragraph 10 of D.15-12-014 required the Executive Director to "prepare and publish instructions for CCAs and utilities that includes a timeline and describes the procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, notice to CCAs of the appropriate CRS, and registration of CCAs." (D.05-12,041 at p. 70 [Ordering Paragraph 10].) We previously instructed that the "process and the timeline shall be consistent with the statute. . . ." (*Ibid*.)

CCSF contends that the adopted timeline modifies D.15-12-041 and is inconsistent with section 366(c)(8) which requires the Commission to "designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission." (Rehg. App. at p. 7.) CCSF contends that we already established both the earliest possible implementation for the CCA program generally and for an individual CCA's provision of service in D.05-12-041. (Rehg. App. at p. 7.)

CCSF is not correct. The timeline adopted in D.15-12-041 is consistent with Ordering Paragraph 5 of D.05-12-041 which states:

> The earliest possible implementation date for a Community Choice Aggregator's (CCA) provision of service is the date of the completion of all tariffed requirements or the date the CCA and the utility agree is reasonable, whichever is later, unless a Commission order or letter from the Executive Director states otherwise.

The timeline adopted in Resolution E-4901 does not modify D.05-12-041. Rather it implements the directives in D.05-12-041 to define the earliest possible implementation date by future Commission order.

Finally, CCSF contends that Resolution E-4907 lacked sufficient findings to justify the changes it makes to D.05-12-041. (Rehg. App. at p. 7.) CCSF states that the Resolution itself admits that it modifies the prior timeline established in D.05-12-041. (Rehg. App. at p. 8.) However, this is wrong. As discussed above, Resolution E-4907

did not change or modify D.05-12-014. Although CCSF points to some imprecise language used in the Resolution that might sound like we modified a prior adopted timeline, the Resolution did not actually make any changes to any adopted timeline.

It is important to note that D.05-12-041 provided an illustrative timeline and instructed the Executive Director to prepare and publish such a process. (D.05-12-041 at p. 70 [Ordering Paragraph 10].) Because that process was not established until the issuance of this Resolution, the Commission had been following the illustrative timeline which was based upon statutory requirements. We modify Resolution E-4907, as set forth in the ordering paragraphs below, to clarify that no prior timeline was modified by Resolution E-4907.

III. CONCLUSION

As discussed above, we modify Resolution E-4907 to add clarifying information and to correct ambiguous language. Rehearing of Resolution E-4907, as modified, should be denied as no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. Resolution E-4907 is modified as follows:

   a. The last paragraph on page 7 is modified to read:

      > Energy Division issued data requests to PG&E requesting information about stranded costs. PG&E filed responses, which illustrated the existence of stranded costs. PG&E's responses were confidential because of market-sensitive information.

   b. The first sentence of the first paragraph on page 8 is modified to read:

      > Public peak demand information from CCA Implementation Plans illustrates the scale of load migration happening in the year-ahead Resource Adequacy program.

   c. Footnote 14 is added after the first sentence in the first paragraph on page 8, with the following text for this footnote.

The following CCAs submitted Implementation Plans or Addendums to Implementation Plans to serve new CCA load in 2018 and did not account for that additional load in the year-ahead Resource Adequacy process: Clean Power Alliance (formerly known as Los Angeles Community Choice Energy), San Jacinto Power, East Bay Community Energy, Monterey Bay Community Power, Pioneer Community Energy, Marin Clean Energy's Addendum No. 5 Expansion to: Contra Costa County, the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg, and San Ramon, and the towns of Danville and Moraga.

d. Footnote 15 is added after "3,616 MW" in the second sentence of the first paragraph on page 8, with the following text for this footnote.

The approximate System Peak Resource Adequacy requirement was calculated as follows: The above listed CCAs in Footnote 14 reported collectively an approximate 2018 peak demand of 2,340 MW in PG&E's service territory and 1,154 MW in SCE's territory in their Implementation Plans. In D.05-10-041, the Commission established a system Resource Adequacy requirement that equals an LSE's peak demand plus a fifteen percent planning reserve margin. Ninety percent of that requirement must be met by LSEs in the year ahead. To calculate the approximate system Resource Adequacy requirement, the 2018 peak demand for CCAs in Footnote 14 was added together and multiplied by 1.15 to account for the 15% planning reserve margin. That number was multiplied by .9 to reach the ninety percent year-ahead procurement requirement.
((2,340 MW +1154 MW) * 1.15) * 0.90 = 3,616 MW.

e. Footnote 16 is added after "1,793 MW" in the second sentence of the first paragraph on page 8, with the following text for this footnote.

To calculate the approximate Local Resource Adequacy requirement, staff created load ratio using the aggregate peak MW in each Transmission Access Charge ("TAC") (e.g. 2,340/total Peak in PG&E TAC) and multiplied the load share by the total 2018 local requirement in each TAC area.

f. Footnotes 14 through 21 are renumbered 17 through 24 respectively.

g. The fourth full paragraph on page 9 is modified to read:

> Appendix B reflects the current practice of CCA registration, which is based on the statutory deadlines established in section 366.2 and which is similar to the illustrative timeline provided in Attachment D of D.15-12-041. However, several milestones in the registration process did not have deadlines defined by statute. These milestones are identified as "undefined" in Appendix B.

h. The first sentence in the first paragraph on page 10 is modified to read:

> The timeline adopted in this resolution (Adopted Timeline) addresses these "undefined" milestones and thus differs from the current practice in several respects.

i. The third sentence of the second full paragraph on page 16 is modified to read:

> The CCA timeline adopted by this resolution is an exercise of the authority the Commission has had since 2002.

2. Rehearing of Resolution E-4907, as modified, is denied.

3. This proceeding, Application (A.) 18-03-005, is closed.

This order is effective today.

Dated July 26, 2018, at Sacramento, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners